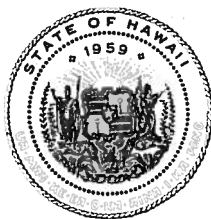


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLEWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 20, 2009

Paul Conry, Administrator
Division of Forestry and Wildlife
Department of Land and Natural Resources
1151 Punchbowl Street, Rm. 325
Honolulu, Hawaii 96813

Dear Mr. Conry,

SUBJECT: One-Day Right-of Entry to Division of Forestry and Wildlife, for Environmental Investigation Purposes, onto Unencumbered State Lands at Ilio Point, Island of Molokai, Tax Map Key: (2) 5-1-002:006.

By correspondence dated October 20, 2009, staff of the Division of Forestry and Wildlife (DOFAW) Natural Area Reserves System (NARS) requested a right-of-entry onto certain unencumbered State lands to conduct environmental investigations relating to a proposal to qualify the site as a candidate for the NARS. Activities upon the State-owned property will include walking and driving along established trails and roads over the area known as the former Ilio Point Bombing Range to inventory local and possibly endangered flora and fauna.

The subject property was purchased by the State of Hawaii in 1968 from the federal government as surplus land with potential as a valuable recreational area. The site had been used as a Coast Guard LORAN station, and, more importantly, formerly used as a World War II bombing range. As acknowledged in the deed conveying the property, "portions of the property had been subjected to contamination by the introduction of unexploded and dangerous bombs, shells, rockets, mines and other charges, either below or upon the surface thereof."

The property was quitclaimed on August 15, 1968 to the State of Hawaii ("State") by the United States of America on condition that the State "decontaminate the said property" and that "no public use of the property will be permitted...until the surface of the entire property has been decontaminated of unexploded ordnance..." To satisfy another condition of conveyance, warning signs have been maintained at key entrance points to the property since its acquisition. Concerted attempts to legislate federal funding for decontamination of the site have proved unsuccessful thus far, but like efforts continue through the present day. Any future access to the property for official purposes must therefore take into account the inherent risks and responsibilities.

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of September 28, 2001 (Item D-4), as amended, Section 171-55, Hawaii Revised Statutes, as amended, and Section 13-221-5, Hawaii Administrative Rules, as amended, on behalf of the Department of Land and Natural Resources (hereinafter the "Department"), DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf is hereby granted a right-of-entry over the subject area, subject to the following terms and conditions:

1. In accordance with the Exemption List for the State of Hawaii, Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council and dated December 4, 1991, this right-of-entry is exempt from the preparation of an environmental assessment pursuant to: Exemption Class No. 1, because the right-of-entry is issued for the purpose of operations, repairs or maintenance of existing facilities and topographical features that involve negligible or no expansion or change of use beyond that previously existing; Exemption Class No. 4, because it is issued for the purpose of engaging in minor alterations in the conditions of the land, water, or vegetation in the area; and Exemption Class No. 5, because it is issued for the purpose of basic data collection, research, experimental management, and resource evaluation activities that will not result in a serious or major disturbance to the environmental resources of the area.
2. This right-of-entry permit shall be limited to the hours between 6:00 a.m. and 9:00 p.m., October 21, 2009, or completion of the investigation, whichever is sooner.
3. DOFAW's environmental investigation will be restricted to the property identified as Tax Map Key: (2) 5-1-002:006, as shown on the attached map (Exhibit A).
4. DOFAW group shall be accompanied by an EOD (Explosive Ordnance Disposal) Specialist with minimum Technician II level training and experience to conduct ordnance avoidance for the group.
5. DOFAW shall ensure its invitees, consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf relating to DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of DOFAW, its invitees, consultants, contractors and/or

persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

6. In consideration of the issuance of this right-of-entry, DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf releases the State and its employees and representatives from all claims or liability for any loss that might occur while on the demised premises for whatever reason or cause.
7. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf, acknowledges and agrees that portions of such lands are raw and unimproved, that the State has made no effort to determine or remedy possible hazards located thereon, and that DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf enters such lands at its own risk.
8. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
9. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or regulation, or, if the material is unregulated, to the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area any such materials except to use in the ordinary course of business of DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the State of the identity of such materials and upon the State's consent which may be withheld at the State's sole and absolute discretion.
10. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf shall be responsible for damage or injury caused by or resulting from any act or omission of DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf in connection with the release of hazardous materials on the right-of-entry area occurring while DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf are in possession, or elsewhere if caused by DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous substance, or oil as defined in the Resource Conservation and Recovery Act (RCRA), as amended, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, the Federal Clean Water Act, as amended, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted, to the extent such definition and such law, regulation, ordinance, rule, or by-law is consistent with Federal law and the Supremacy Clause of the United States Constitution.

11. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry, shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
12. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf shall contact and coordinate with the Department of Land and Natural Resources, Land Division and all other appropriate State or County agency prior to accessing the subject parcel.
13. No open fire or burning of any kind shall be permitted on the right-of-entry area and/or the surrounding State property.
14. DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings on the right-of-entry area during the effective period of this right-of-entry.
15. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered, DOFAW, its invitees, consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.
16. The Department of Land and Natural Resources, Land Division, its Chairperson, and/or its Administrator reserves the right to impose additional terms and conditions, if deemed necessary while this right-of-entry is in force.

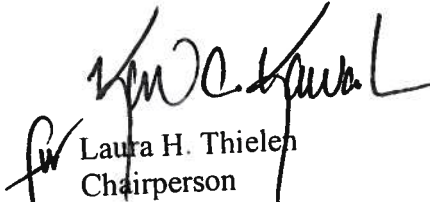
Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am also authorized to waive rent for rights-of-entry that are government related, or where no entity involved intends to profit monetarily from its use. Since your event meets these requirements, the rent is hereby waived.

Should you accept the above terms and conditions, please sign in the space provided below and return or fax a signed copy of this letter to the Oahu District Land Division Office, at 1151 Punchbowl Street, Room 220, in Honolulu, Hawaii.

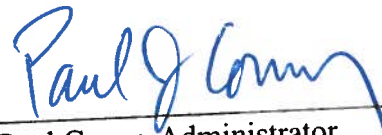
Right-of-Entry to NARS Group for October 21, 2009
TMK: (2) 5-1-002:006
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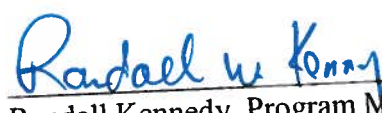
If you have any questions, please feel free to contact Barbara Lee, Project Development Specialist, at (808) 587-0453 in the Land Division. Thank you.

Very Truly Yours,


Laura H. Thiele
Chairperson

ACCEPTED:


Paul Conry, Administrator
Division of Forestry and Wildlife


Randall Kennedy, Program Manager
Natural Area Reserves System

cc: Chairperson's Office
Land Board Member
District Files

TAX MAP KEY NO.: (2) 5-1-002:006
State of Hawaii

Ilio Point

